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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,961	01/26/2006	Neil B. McKeown	39-324	8444
23117 7590 10/08/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
MENON, KRISHNAN S				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
10/08/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/565,961

Applicant(s)

MCKEOWN ET AL.

Examiner

Krishnan S. Menon

Art Unit

1797

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 59-86, 88 and 89 is/are pending in the application.
- 4a) Of the above claim(s) 73-82, 84, 86 and 89 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 59-72, 83, 85 and 88 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date 1/26/06: 5/2/08.
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 59-86, 88 and 89 are pending as amended 8/13/08. Claims 59, 85, 88 are independent.

Election/Restrictions

Applicant's election with traverse of group I, claims 59-72, 74-76, 81-85 and 88 in the reply filed on 8/13/08 is acknowledged. The traversal is on the ground(s) that the cited reference McKeon does not support the position that the repeat units in the instant claims only go in two directions, where as the reference has a cross-linked structure.. This is not found persuasive because McKeon anticipates the technical feature linking these groups of claims as shown in the restriction requirement, as well as the claims as shown infra.

Applicant's election of microporous material as in claim 66 from species group A and molecular sensor from species group B is acknowledged. Based on this election, the claims readable on both the elected species are:

59-62, 66, 69-72,85 and 88

However, the following claims will be examined since claim 65 was indicated as allowable before, and the reference considered teaches others:

59-72, 83, 85 and 88.

Claims 73-82, 84,86 and 89 are withdrawn from consideration, but several of these claims may be rejoined upon allowance of the generic claims or the elected species, if they are amended to contain the limitations of the allowed claim.

[Please note that the formula in claim 89 is not readable].

The requirement is still deemed proper and is therefore made FINAL.

Double Patenting

Claim 88 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 66. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

Claims 59-64, 66, 69 -72, 83, 85 and 88 are rejected under 35 U.S.C. 102(a) as being anticipated by, or in the alternative, under 35 USC 103(a) as being obvious over by WO 03/000774, or alternately, McKeown (US 2004/0198587), its US equivalent (Used in the rejection).

These claims recite a microporous macromolecular material having repeat units, all of which are either taught by, or made obvious by the McKeown reference. Specifics are as follows:

Claim 63 – corresponding formula in the reference is (IV).

Claim 64, 89: formula (IV) and (V) form the repeat unit; also IIb,

Claim 66, 88: see formula X, XII

Claims 67 and 69: the reference teaches such macromolecules, or at least reactions steps that lead to such macromolecules – see for example, formula IIb, IV and V, where L2 can be formula V, and the formula IIb represents a macromolecule of the repeat unit recited. Even if the macromolecules are considered to have porphyrinic links, the resulting macromolecule can be expected to have >90% by mole of the repeating units recited – the reference appears to teach large chains attached to a porphyrinic molecule. In addition, the molecular mass of the porphyrinic molecule being so high, its contribution to the mole ratio in the resulting macromolecule network would be very low.

Claims 70-72 recite inherent material properties.

Claim 83: molecular sensor is only an intended use of the material, since the claim does not recite any specific structure attributable to the molecular sensor.

Allowable Subject Matter

Claims 65 and 68 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krishnan S. Menon whose telephone number is 571-272-1143. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Krishnan S Menon/
Primary Examiner, Art Unit 1797